

2006

State of Utah v. Robert Weaver : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)	
)	
Appellant,)	
)	Case No. 20060801-CA
vs.)	
)	
ROBERT WEAVER,)	
)	
Appellee.)	

BRIEF OF APPELLEE

APPEAL FROM AN ORDER DISMISSING WITH PREJUDICE AN
ENHANCED CHARGE OF POSSESSION OF LESS THAN ONE OUNCE
OF MARIJUANA, A CLASS A MISDEMEANOR, DRIVING UNDER
THE INFLUENCE OF ALCOHOL AND/OR DRUGS, A CLASS B
MISDEMEANOR, AN ENHANCED CHARGE OF POSSESSION OF
DRUG PARAPHERNALIA, A CLASS A MISDEMEANOR, AND FALSE
REGISTRATION, A CLASS C MISDEMEANOR, IN THE FIFTH
JUDICIAL DISTRICT COURT IN AND FOR WASHINGTON COUNTY,
THE HONORABLE JUDGE JAMES L. SCHUMATE PRESIDING

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

This is an appeal of an order dismissing with prejudice the charges filed by the State of Utah against the Appellee. This Court has jurisdiction to hear this appeal of the order of the District Court.

STATEMENT OF THE ISSUE, PRESERVATION, AND
STANDARD OF REVIEW

The issue in this appeal is whether Deputy Mitchell violated the Appellee's Constitutional rights under the Fourth Amendment of the U.S. Constitution and under Utah Code Ann. 41-1a-1305 (West 2004). Specifically, the Court is asked to determine whether the Deputy's extending the traffic stop, by ordering appellee out of his vehicle and continuing the interrogation after the Deputy had made the

determination that the registration, VIN number, driver's license and insurance matched the vehicle and were in order and after he made the statement to dispatch that he intended to return appellee's license and registration papers and to tell him to contact Nevada D.M.V., was a violation of the Fourth Amendment.

Preservation: This issue was preserved by Appellee's Motion to Suppress evidence. R29.

Standard of Review: The appellate court reviews the district court's factual findings under a clearly erroneous standard. See State v. Callahan, 2004 UT App 164, 93 P.3d 103. The appellate court reviews of the trial court's conclusions of law under a correctness standard. See State v. Duran, 2005 UT App 409, 131 P.3d 246.

CONSTITUTIONAL PROVISION AND STATUTE

The Fourth Amendment to the United States Constitution and Utah Code Ann 41-1a-1305.

STATEMENT OF THE CASE

Appellee was charged with various misdemeanor traffic offenses as well as misdemeanor possession of marijuana and DUI. Defendant filed a motion to suppress the evidence obtained by the State. R29-43. The Court held hearings on February 14, 2006 and on March 27, 2006. Judge James Shumate granted the

motion on March 27, 2006. R67. Said charges were dismissed on motion by the State. R88. The State appealed. R89.

STATEMENT OF FACTS

This appeal involves dismissed criminal charges of possession of .3 grams of marijuana and false registration. The matter started as a routine traffic stop that occurred on September 6, 2005 in a Wal-Mart parking lot. Appellee's vehicle was stopped by an Officer Mitchell due to a concern over the registration. R102: 4-10, 20, 27. When Officer Mitchell approached the appellee's vehicle he stated that he had stopped the car due to possible false registration. R102:24. Officer Mitchell testified that he checked the VIN in the windshield and that everything in his hands appeared to be correct and to match the vehicle. R102:25. At some unknown time, dispatch realized that it had made an error regarding the registration and informed Officer Mitchell. Judge Schumate made a specific factual finding that dispatch had made a mistake in running appellee's plates. R102:31-32.

Officer Mitchell testified at the suppression hearing that the appellee's driver's license was also confirmed with dispatch as being valid and was consistent with the other forms presented to the traffic officer. R102: 24-25. No warrants were found for the defendant and no other indicia of criminal activity

existed at this time per Officer Mitchell's testimony. R102: 24-25. At this juncture the Officer turned on his video-camera and recorded the events thereafter. Judge Shumate relied on the videotape in granting the motion to suppress. R76-78; R102:2-9.

The beginning of the videotape contains a conversation between the Officer and dispatch. Judge Schumate summarized the conversation as follows:

"After the deputy had his conversation by cell phone with dispatch center, the deputy put in his conversation with dispatch and noted at 20:46:45 that he was going to go to Mr. Weaver and tell Mr. Weaver that Mr. Weaver should check with Nevada DMV – Department of Motor Vehicles– to tell them that they have very peculiar information on their database regarding his license number. That the deputy was satisfied that this vehicle was appropriately registered and licensed to Mr. Weaver is inferred by the Court from the deputy's determination to make this statement to Mr. Weaver, and all things being equal, that would be the end of the encounter." R100: 6.

Officer Mitchell was asked the following question at the suppression hearing: "Was there any other information that the defendant could have given to you to convince you that he was in fact the registered owner of the car, other than the documentation that he gave you?" Officer Mitchell's answer was simply and

singularly “No.” R102:26. On further cross-examination Officer Mitchell responded to this issue as follows:

Q: There was nothing more I could tell you that would convince you that I was in fact the owner of the car, correct?

A: “Correct. * * *” R102:30.

Despite the regularity of the various proofs presented to Deputy Mitchell, he inexplicably returned to the defendant’s car and ordered him to exit the vehicle. V20:46:43-48. Nothing had changed between the time he told dispatch that he was intending to return appellee’s proofs and when he ordered appellee out of his car and began an interrogation. His only justification for extending the stop was as follows:

“Well, I – what we usually do is if there’s two people, maybe you’re not giving me straight answers or something so I want to separate you, and so that’s – you know, I want just to talk to you.” R102:30.

Officer Mitchell testified on direct examination at the suppression hearing that he had smelled alcohol while appellee was still in his car. However, on cross examination and when presented with the arrest report, Officer Mitchell admitted that he was mistaken in his testimony and that it was not until after appellee was removed from his car that the deputy detected an odor of alcohol on appellee’s

breath. R102: 27-28.

SUMMARY OF ARGUMENT

The Fourth Amendment to the U.S. Constitution guarantees to each citizen the right to be free from unreasonable searches and seizures by any governmental agency. Deputy Mitchell had no reasonably articulable basis to suspect that any laws had been broken by appellee or that any criminal activity may be occurring. Officer Mitchell violated the appellee's fourth amendment rights by prolonging the traffic stop after the purpose of the stop had been effectuated.

ARGUMENT

JUDGE SCHUMATE CORRECTLY CONCLUDED THAT THE TRAFFIC STOP WAS UNJUSTIFIABLY PROLONGED WHEN OFFICER MITCHELL DETAINED APPELLEE AFTER HE HAD DETERMINED THAT THE REGISTRATION AND OWNERSHIP WERE FULLY IN ORDER

Utah courts have long recognized that stopping a vehicle and detaining its occupants is a seizure and must be analyzed under the reasonableness inquiries of the Fourth Amendment. United States v. Wisnewski, 358 F. Supp. 2d 1074, 1086 (D. Utah 2005), citing United States v. Walker, 933 F.2d 812, 815 (10th Cir. 1991). “Once a traffic stop is made, it must last no longer than is necessary to effectuate the purpose of the stop.” State v. Lopez, 873 P.2d 1127, 1132 (Utah 1994). Because a normal traffic stop is similar to an investigative detention, it must be

analyzed under the principles set forth in Terry v. Ohio, 392 U.S. 1 (1968).

Pursuant to the legal analysis set forth in Terry, a traffic stop is reasonable if the traffic officer's actions were justified at its inception and if the scope of the stop was reasonably related to the circumstances which justified the stop in the first place. Terry at 20. Applying the Terry test to the instant action, it is clear that Officer Mitchell's extended stop of the vehicle was not legally justified.

The suppression hearing testimony of Officer Mitchell indicated that the appellee's vehicle was stopped because of a discrepancy with the vehicle's registration. It is undisputed that the appellee produced a copy of the valid Nevada registration, proof of insurance and his valid Utah driver's license. All these documents identified the appellee as the registered owner of the vehicle, as the named insured, and contained an accurate VIN number for the vehicle. R102:24. Officer Mitchell testified that no discrepancies existed with these proofs. *Id.* Officer Mitchell also examined the VIN number from outside the front windshield and verified that the VIN number was the same as that contained on the registration form and insurance form. R`102: 24-25.

Any alleged discrepancy regarding ownership of the vehicle was resolved by these proofs. Any further detention of the defendant was an unlawful seizure of his person under the Fourth Amendment and could in no way advance the issue

of ownership of the vehicle. Officer Mitchell admitted that there was no other proofs that the appellee could be expected to produce to prove legal ownership and that there was nothing the appellee could say or do to substantiate this fact.

R102: 26. Additionally, Officer Mitchell testified that police radio dispatch advised that they made a mistake running the plates of the appellee's vehicle.

R102:8. Officer Mitchell could not recall whether dispatch informed him of the mistake before or after appellee was administered a breath test. *Id.*

Evidence was produced in suppression motion that Officer Mitchell's knew, at the time of the arrest of appellee, that the vehicle was not stolen. R29 at Exhibit 5. Officer Mitchell listed the owner of the vehicle as the defendant on the impound document that he completed. *Id.* Had Officer Mitchell truly believed that the car was stolen, he clearly would not have listed the appellee as the owner on the impound form.

OFFICER MITCHELL HAD NO REASONABLY ARTICULABLE BASIS TO SUSPECT THAT A CRIME OR A TRAFFIC VIOLATION HAD BEEN COMMITTED

It is well established that a traffic stop must "last no longer than is reasonably necessary to effectuate the purpose of the stop." Additionally, the "scope of the detention must be carefully tailored to its underlying justification" United States v. Hunnicut, 135 F.3d 1345, 1349 (10th Cir. 1998) (quoting Florida

v. Roger, 460 U.S. 490, 500 (1983).

A police officer may detain someone longer than is reasonably related to the underlying stop only under two very limited occasions: (1) when the officer has an objectively reasonable and articulable suspicion that illegal activity has occurred or is occurring, or (2) when the initial detention becomes a consensual encounter Hunnicut at 1349. It is quite clear that the appellee did not consent to the further detention of his being or his vehicle. Thus only the first prong of the exception to extending the traffic stop applies in this case.

Officer Mitchell's continued detention of the defendant and subsequent conduct was flagrantly unlawful as it went well beyond that needed to verify the ownership of the vehicle. As the Utah Court recognized in U.S. v. Walker, an officer conducting a routine traffic stop may request a license and registration, run a computer check and issue a citation. "When the driver has produced a valid license and proof that he is entitled to operate the vehicle, he must be allowed to proceed on his way without being subject to further delay by police for further questioning." 807 F. Supp. 115, 117 (D. Utah 1992), quoting United States v. Guzman, 864 F.2d 1512 (10th Cir. 1988). The Walker Court specifically noted that Utah's "peace officers must conform their official conduct to the standard quoted above." After the requirements of Guzman have been met, the officer in this case

had the duty to let appellee proceed without being subject to further delay for additional questioning.

Officer Mitchell failed to comply with Utah law and the U.S. Constitution regarding traffic stops. Rather than allowing the appellee to proceed without further delay he unlawfully seized the defendant without probable cause to inquire into matters unrelated to the traffic stop, seeking information to which the officer was not then entitled. As the Utah court recognized in Walker, “such conduct is flagrant and such purpose directly exploits the unlawful detention. Both the conduct and the purpose are in direct violation of the law set forth in Guzman.”

The instant set of facts are so similar to be legally identical to the facts pertaining to the detention in Walker. In short, the inquiry from the time the appellee was told to exit his vehicle should never have occurred. “The stain of the illegal detention colors the whole continuum of events . . . They are all of one piece.” Walker at 118. Supreme Court Justice Powell noted that he would require some demonstrably effective break in the chain of events leading from an illegal arrest to the search, such as the accused’s presentation before a magistrate for a determination of probable cause, before the taint can be removed.” Brown v. Illinois, 422 U.S. 590 (1975).

In the instant case, the subsequent inquiry into appellee’s alleged

consumption of beer, the field sobriety test, the three subsequent searches of the appellee's vehicle and the evidence seized from the vehicle and his person (i.e., urine sample) were all the result of the exploitation of an unlawful detention. This unlawfully obtained evidence was properly suppressed by Judge Schumate, as was done in Walker. Suppression of this evidence is necessary not to "insulate a defendant from prosecution but to vindicate- take seriously- the applicable constitutional provision." United States v. Walker, 753 F. Supp. 199, 204 (D. Utah 1990). "In sum, the state, in fulfilling its responsibility to deal with the lawless, must itself act lawfully." *Id.*

It is clear that the defendant's Fourth Amendment rights were violated by the expanded scope of the traffic stop. Officer Mitchell had already obtained the vehicle's registration papers, examined the VIN number on the vehicle and its license plate carefully, and spent a considerable amount of time in his police cruiser communicating with dispatch. Judge Schumate made a specific finding that Officer was "communicating with dispatch center not by radio but over the cell phone. So that while we have audible conversation on the radio, most of the conversation that we have does not pertain to Mr. Weaver at all." R 100:4. After performing all these tasks and detaining the defendant for quite some time, Officer Mitchell then again approached the appellee's car and forced him to exit his

vehicle.

Officer Mitchell's actions made it clear to the appellee that he was not free to leave the scene and that he was being detained and further scrutinized. In State v. Higgins, the Utah Supreme Court made it clear that once a person is seized for Fourth Amendment purposes it must be clear to the seized person from the words of the officer that the person is at liberty to go about his business. 844 P.2d 1242, 1244 (Utah 1994). Judge Schumate's synopsis of the videotape of the incident makes clear that Officer Mitchell's police cruiser was parked directly behind the appellee's vehicle, making it impossible for the appellee to drive away.

Additionally, Officer Mitchell retained the appellee's driver's license, registration and insurance papers, a clear indication that he was not a liberty to leave.

Officer Mitchell's testimony at the suppression hearing never indicated that appellee's speech was slurred, that his eyes were red or droopy, that he smelled alcohol or marijuana emanating from him or from his vehicle, that he saw any open or closed containers in the vehicle, or that he appeared to be intoxicated or impaired in any manner. Nonetheless, Officer Mitchell found it necessary to further detain the appellee and required him to exit his vehicle for reasons never stated. This detention was clearly unreasonable under these circumstances.

Officer Mitchell lacked reasonable suspicion that a crime or traffic violation

may have been committed. Reasonable suspicion must be determined by examining the alleged factors within the “totality of the circumstances.” United States v. Fernandez, 18 F.3d 874, 878 (10th Cir. 1994). Although the nature of the “totality of the circumstances makes it possible for individually innocuous factors to add up to reasonable suspicion, it is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation.” United States v. Salzano, 158 F.3d 1107, 1114-5 (10th Cir. 1998).

There were no factors at the initial traffic stop that warranted further detention. Nothing in the Officer’s testimony provides any guidance as to the reasons for extending the traffic stop at that time. His sole justification for extending the stop and ordering appellee out of the car was that “you know, I just want to talk to you.” R102:30. After exiting the vehicle Officer Mitchell began questioning the appellee regarding where he was going, what he was doing, and whether he had been drinking any alcohol. This conversation should never have taken place. At this point in time, Officer Mitchell lacked articulably reasonable suspicion to detain the appellee. Any further delay consisted of an unlawful seizure under the doctrine enunciated in Terry v. Ohio and U.S. v. Hunnicut, *supra*.

APPELLANT'S ARGUMENT'S ARE FATALY FLAWED

Judge Schumate correctly recognized that the purpose of the stop was complete when Officer Mitchell told dispatch that he was satisfied with the appellee's proofs and that he was going to tell him to contact Nevada DMV. Officer Mitchell had completed his own investigation and had no legal right to continue the interrogation. He had a duty to allow appellee to proceed without further delay. Any additional interrogation, whether inside the vehicle or in the parking lot, violated the appellee's Fourth Amendment rights.

Appellant is hard pressed to find a legal basis to overturn Judge Schumate's decision. Its brief absurdly argues that Judge Schumate misunderstood the law involving the Fourth Amendment. App. Brf. at 6-8. Judge Schumate likely has more experience with the Constitution than both counsel together. He correctly applied the law to the facts as he found them. This Court must defer to his factual findings and should affirm his legal conclusions, all of which are consistent with Utah law and the Fourth Amendment.

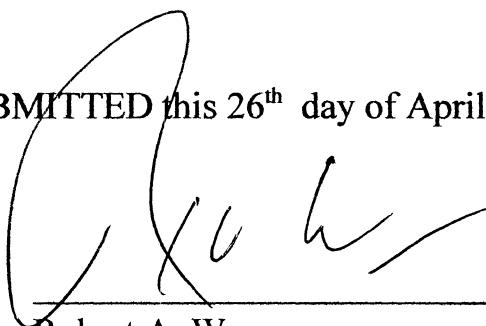
Appellant's contention that the purpose of the traffic stop was not complete until appellee was returned his possessions is misplaced. App. Brief at 7-9. The undisputed purpose of the stop was to determine whether the vehicle was registered to the driver. After Deputy Mitchell had completed his very thorough

investigation of the matter, he made the decision that the vehicle was registered to the driver. This should have been the end to any inquiry on the subject. The fact that he still had possession of the driver's license and registration papers does not mean that his inquiry was incomplete. At this point in time, absent any other indicia of criminal activity, Officer Mitchell was obliged to return the appellee's driver's license and registration and to allow appellee to proceed without further delay. See U.S. v. Hunnicut, supra. Any further interrogation, inside or outside of the appellee's vehicle, violated his Fourth Amendment rights. Any suggestion to the contrary is inconsistent with the laws of the State of Utah and the U.S. Constitution. Judge Schumate did not misunderstand the law and correctly applied it to the facts as he found them. Any arguments to the contrary are wholly misplaced and unsupported by the facts and the law.

CONCLUSION

Based upon the foregoing, Officer Mitchell's extended seizure of the appellee lacked reasonable suspicion and probable cause. It was thus unlawful under the Fourth Amendment. Appellee respectfully request that this Court uphold the decision by Judge Schumate to suppress the evidence unlawfully obtained by the State.

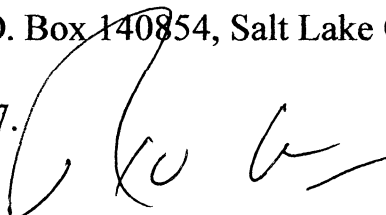
RESPECTFULLY SUBMITTED this 26th day of April, 2007.



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CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the foregoing Brief of Appellee were mailed, first class postage prepaid, to the Utah Attorney General's Office via Kenneth A. Bronston, Assistant Attorney General, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 27th day of April, 2007.



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